

109TH CONGRESS
1ST SESSION

S. 1691

To amend selected statutes to clarify existing Federal law as to the treatment of students privately educated at home under State law.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13, 2005

Mr. CRAIG (for himself and Mr. SESSIONS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend selected statutes to clarify existing Federal law as to the treatment of students privately educated at home under State law.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Home School Non-
5 Discrimination Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress finds as follows:

8 (1) The right of parents to direct the education
9 of their children is an established principle and
10 precedent under the United States Constitution.

1 (2) Congress, the President, and the Supreme
2 Court, in exercising their legislative, executive, and
3 judicial functions, respectively, have repeatedly af-
4 firmed the rights of parents.

5 (3) Education by parents at home has proven
6 to be an effective means for young people to achieve
7 success on standardized tests and to learn valuable
8 socialization skills.

9 (4) Young people who have been educated at
10 home are proving themselves to be competent citi-
11 zens in postsecondary education and the workplace.

12 (5) The rise of private home education has con-
13 tributed positively to the education of young people
14 in the United States.

15 (6) Several laws, written before and during the
16 rise of private home education, are in need of clari-
17 fication as to their treatment of students who are
18 privately educated at home pursuant to State law.

19 (7) The United States Constitution does not
20 allow Federal control of homeschooling.

21 **SEC. 3. SENSE OF CONGRESS.**

22 It is the sense of Congress that—

23 (1) private home education, pursuant to State
24 law, is a positive contribution to the United States;
25 and

4 SEC. 4. CLARIFICATION OF PROVISIONS ON INSTITU-
5 TIONAL AND STUDENT ELIGIBILITY UNDER
6 THE HIGHER EDUCATION ACT OF 1965.

(b) CLARIFICATION OF STUDENT ELIGIBILITY.—Section 484(d) of the Higher Education Act of 1965 (20 U.S.C. 1091(d)) is amended by striking the heading and inserting “SATISFACTION OF SECONDARY EDUCATION STANDARDS”.

17 SEC. 5. CLARIFICATION OF ABSENCE OF CONSENT FOR INI-
18 TIAL EVALUATION UNDER THE INDIVIDUALS
19 WITH DISABILITIES EDUCATION ACT.

Section 614(a)(1)(D)(ii)(I) of the Individuals with
Disabilities Education Act (20 U.S.C.
1414(a)(1)(D)(ii)(I)) is amended to read as follows:

23 “(I) FOR INITIAL EVALUATION.—
24 A local educational agency may pur-
25 sue the initial evaluation of a child by

1 utilizing the procedures described in
 2 section 615, except to the extent in-
 3 consistent with State law relating to
 4 parental consent for an initial evalua-
 5 tion under clause (i)(I), only if the
 6 child is enrolled in public school or is
 7 seeking to be enrolled in public
 8 school.”.

9 **SEC. 6. CLARIFICATION OF THE COVERDELL EDUCATION**
 10 **SAVINGS ACCOUNT AS TO ITS APPLICABILITY**
 11 **FOR EXPENSES ASSOCIATED WITH STUDENTS**
 12 **PRIVATELY EDUCATED AT HOME UNDER**
 13 **STATE LAW.**

14 (a) IN GENERAL.—Paragraph (4) of section 530(b)
 15 of the Internal Revenue Code of 1986 (relating to quali-
 16 fied elementary and secondary education expenses) is
 17 amended by adding at the end the following new subpara-
 18 graph:

19 “(C) SPECIAL RULE FOR HOME
 20 SCHOOLS.—For purposes of clauses (i) and (iii)
 21 of subparagraph (A), the terms ‘public, private,
 22 or religious school’ and ‘school’ shall include
 23 any home school which provides elementary or
 24 secondary education if such school is treated as

1 a home school or private school under State
2 law.”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall apply to taxable years beginning after
5 the date of the enactment of this Act.

6 **SEC. 7. CLARIFICATION OF SECTION 444 OF THE GENERAL**
7 **EDUCATION PROVISIONS ACT AS TO PUB-**
8 **LICLY HELD RECORDS OF STUDENTS PRI-**
9 **VATELY EDUCATED AT HOME UNDER STATE**
10 **LAW.**

11 Section 444 of the General Education Provisions Act
12 (20 U.S.C. 1232g; also referred to as the Family Edu-
13 cational Rights and Privacy Act of 1974) is amended—

14 (1) in subsection (a)(5), by adding at the end
15 the following:

16 “(C) For students in non-public education (including
17 any student educated at home or in a private school in
18 accordance with State law), directory information may not
19 be released without the written consent of the parents of
20 such student.”;

21 (2) in subsection (a)(6), by striking “, but does
22 not include a person who has not been in attendance
23 at such agency or institution.” and inserting “, in-
24 cluding any non-public school student (including any
25 student educated at home or in a private school as

1 provided under State law). This paragraph shall not
2 be construed as requiring an educational agency or
3 institution to maintain education records or person-
4 ally identifiable information for any non-public
5 school student.”; and

6 (3) in subsection (b)(1), by striking subpara-
7 graph (F) and inserting the following:

8 “(F) organizations conducting studies for,
9 or on behalf of, educational agencies or institu-
10 tions for the purpose of developing, validating,
11 or administering predictive tests, administering
12 student aid programs, and improving instruc-
13 tion, if—

14 “(i) such studies are conducted in
15 such a manner as will not permit the per-
16 sonal identification of students and their
17 parents by persons other than representa-
18 tives of such organizations and such infor-
19 mation will be destroyed when no longer
20 needed for the purpose for which it is con-
21 ducted; and

22 “(ii) for students in non-public edu-
23 cation, education records or personally
24 identifiable information may not be re-

1 leased without the written consent of the
 2 parents of such student.”.

3 **SEC. 8. CLARIFICATION OF ELIGIBILITY FOR STUDENTS**
 4 **PRIVATELY EDUCATED AT HOME UNDER**
 5 **STATE LAW FOR THE ROBERT C. BYRD HON-**
 6 **ORS SCHOLARSHIP PROGRAM.**

7 Section 419F(a) of the Higher Education Act of
 8 1965 (20 U.S.C. 1070d–36(a)) is amended by inserting
 9 “(or a home school, whether treated as a home school or
 10 a private school under State law)” after “public or private
 11 secondary school”.

12 **SEC. 9. CLARIFICATION OF THE FAIR LABOR STANDARDS**
 13 **ACT AS APPLIED TO STUDENTS PRIVATELY**
 14 **EDUCATED AT HOME UNDER STATE LAW.**

15 Section 3(l) of the Fair Labor Standards Act of 1938
 16 (29 U.S.C. 203(l)) is amended by adding at the end the
 17 following: “The Secretary shall extend the hours and peri-
 18 ods of permissible employment applicable to employees be-
 19 tween the ages of 14 and 16 years of age who are privately
 20 educated at a home school (whether the home school is
 21 treated as a home school or a private school under State
 22 law) beyond such hours and periods applicable to employ-
 23 ees between the ages of 14 and 16 years of age who are
 24 educated in traditional public schools.”.

1 **SEC. 10. RECRUITMENT AND ENLISTMENT OF HOME**
2 **SCHOOLED STUDENTS IN THE ARMED**
3 **FORCES.**

4 (a) **POLICY ON RECRUITMENT AND ENLISTMENT.**—

5 (1) **IN GENERAL.**—The Secretary concerned
6 shall prescribe a policy for the recruitment and en-
7 listment of home schooled students in the Armed
8 Force or Armed Forces under the jurisdiction of
9 such Secretary.

10 (2) **UNIFORMITY ACROSS THE ARMED**
11 **FORCES.**—The Secretary of Defense shall ensure
12 that the policies prescribed under paragraph (1)
13 apply, to the extent practicable, uniformly across the
14 Armed Forces.

15 (b) **ELEMENTS.**—The policy under subsection (a)
16 shall include the following:

17 (1) An identification of a graduate of home
18 schooling for purposes of recruitment and enlistment
19 in the Armed Forces that is in accordance with the
20 requirements described in subsection (c).

21 (2) Provision for the treatment of graduates of
22 home schooling with Tier I status with no practical
23 limit with regard to enlistment.

24 (3) An exemption of graduates of home school-
25 ing from the requirement for a secondary school di-

1 ploma or its recognized equivalent (GED) as a pre-
 2 condition for enlistment in the Armed Forces.

3 (c) HOME SCHOOL GRADUATES.—In identifying a
 4 graduate of home schooling for purposes of subsection (b),
 5 the Secretary concerned shall ensure that the graduate
 6 meets each of the following requirements:

7 (1) The home school graduate has taken the
 8 Armed Forces Qualification Test and scored 50 or
 9 above.

10 (2) The home school graduate has provided the
 11 Secretary concerned with—

12 (A) a signed home school notice of intent
 13 form that conforms with the State law of the
 14 State where the graduate resided when the
 15 graduate was in home school; or

16 (B) a home school certificate or diploma
 17 from—

18 (i) the parent or guardian of the grad-
 19 uate; or

20 (ii) a national curriculum provider.

21 (3) The home school graduate has provided the
 22 Secretary concerned with a copy of the graduate's
 23 transcript for all secondary school grades completed.
 24 The transcript shall—

1 (A) include the enrollment date, gradua-
2 tion date, and type of curriculum; and

3 (B) reflect successful completion of the last
4 full academic year of schooling from the home
5 school national curriculum provider, parent, or
6 guardian issuing the home school certificate or
7 diploma or home school notice of intent form.

8 (4) The home school curriculum used by the
9 home school graduate involved parental instruction
10 and supervision and closely patterned the normal
11 credit hours per subject as used in a traditional sec-
12 ondary school.

13 (5) The home school graduate has provided the
14 Secretary concerned with a third party verification
15 letter of the graduate's home school status by the
16 Home School Legal Defense Association or a State
17 or county home school association or organization.

18 (d) SECRETARY CONCERNED DEFINED.—In this sec-
19 tion, the term “Secretary concerned” has the meaning
20 given such term in section 101(a)(9) of title 10, United
21 States Code.

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